

AN ACT relating to annuity nonforfeiture provisions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.15-365 is amended to read as follows:

(1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities of 2005."

(2) This section shall not apply to any reinsurance group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract. However, to the extent that a variable annuity contract provides benefits that do not, before the maturity date, vary in accordance with the investment performance of any separate account or accounts maintained by the insurer as to such contract, as provided for in KRS 304.15-390, the contract shall contain provisions that satisfy the requirements of this section and shall not otherwise be subject to this section.

(3) In the case of contracts issued on or after July 1, 2006, no contract of annuity, except as provided in subsection (2) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the executive director are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

1 (a) That upon cessation of payment of considerations under a contract, or upon the
2 written request of the contract owner, the insurer shall grant a paid-up annuity benefit on
3 a plan stipulated in the contract of such value as is specified in subsections (8), (9), (10),
4 (11), and (13) of this section;

5 (b) If a contract provides for a lump sum settlement at maturity, or at any other time,
6 that upon surrender of the contract at or prior to the commencement of any annuity
7 payments, the insurer shall pay, in lieu of any paid-up annuity benefit, a cash surrender
8 benefit of such amount as is specified in subsections (8), (9), (10), (11), and (13) of this
9 section. The insurer may reserve the right to defer the payment of this cash surrender
10 benefit for a period not to exceed six (6) months after demand therefor with surrender of
11 the contract after making written request and receiving written approval of the executive
12 director. The request shall address the necessity and equitability to all policyholders of
13 the deferral;

14 (c) A statement of the mortality table, if any, and interest rates used in calculating any
15 minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the
16 contract, together with sufficient information to determine the amounts of such benefits;
17 and

18 (d) A statement that any paid-up annuity, cash surrender or death benefits that may be
19 available under the contract are not less than the minimum benefits required by any
20 statute of the state in which the contract is delivered and an explanation of the manner in
21 which these benefits are altered by the existence of any additional amounts credited by
22 the insurer to the contract, any indebtedness to the insurer on the contract, or any prior
23 withdrawals from or partial surrenders of the contract.

1 Notwithstanding the requirements of this subsection, any deferred annuity contract may provide
2 that if no considerations have been received under a contract for a period of two (2) full years
3 and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract
4 arising from considerations paid prior to that period would be less than twenty dollars (\$20)
5 monthly, the insurer may at its option terminate the contract by payment in cash of the then-
6 present value of such portion of the paid-up annuity benefit, calculated on the basis of the
7 mortality table, if any, and interest rate specified in the contract for determining the paid-up
8 annuity benefit, and by this payment shall be relieved of any further obligation under such
9 contract.

10 (4) The minimum values as specified in subsections (8), (9), (10), (11), and (13) of this
11 section of any paid-up annuity, cash surrender, or death benefits available under an annuity
12 contract shall be based upon minimum nonforfeiture amounts as defined in this section.

13 (a) The minimum nonforfeiture amount at any time at or prior to the commencement
14 of any annuity payments shall be equal to an accumulation up to that time at rates of
15 interest as indicated in subsection (5) of this section of the net considerations, as defined
16 in paragraph (b) of this subsection, paid prior to that time, decreased by the sum of:

- 17 1. Any prior withdrawals from or partial surrenders of the contract
18 accumulated at a rate of interest as indicated in subsection (5) of this section;
- 19 2. An annual contract charge of fifty dollars (\$50) accumulated at rates of
20 interest as indicated in subsection (5) of this section; and
- 21 3. The amount of any indebtedness to the insurer on the contract, including
22 interest due and accrued.

(b) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of gross considerations credited to the contract during that contract year.

(5) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five (5) year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date or average over a period rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under paragraph (d) of this subsection;

(b) Reduced by one hundred twenty-five (125) basis points;

(c) Where the resulting interest rate is not less than one percent (1%); and

(d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five (5) year Constant Maturity Treasury Rate to be used at each redetermination date.

(6) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (5)(b) of this section up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional reduction shall not exceed the market value of the benefit. The executive director may require a demonstration that the present value of the additional reduction does not exceed the

1 market value of the benefit. Lacking such demonstration that is acceptable to the executive
2 director, the executive director may disallow or limit the additional reduction.

3 (7) The executive director may promulgate administrative regulations in accordance with
4 KRS Chapter 13A implementing the provisions of subsection (6) of this section and to provide
5 for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that
6 provide substantive participation in an equity index benefit and for other contracts for which the
7 executive director determines adjustments are justified.

8 (8) Any paid-up annuity benefit available under a contract shall be such that its present value
9 on the date annuity payments are to commence is at least equal to the minimum nonforfeiture
10 amount on that date. This present value shall be computed using the mortality table, if any, and
11 the interest rates specified in the contract for determining the minimum paid-up annuity benefits
12 guaranteed in the contract.

13 (9) For contracts which provide cash surrender benefits, the cash surrender benefits available
14 prior to maturity shall not be less than the present value as of the date of surrender of that portion
15 of the maturity value of the paid-up annuity benefit which would be provided under the contract
16 at maturity arising from considerations paid prior to the time of cash surrender reduced by the
17 amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the
18 present value being calculated on the basis of an interest rate not more than one percent (1%)
19 higher than the interest rate specified in the contract for accumulating the net considerations to
20 determine the maturity value, decreased by the amount of any indebtedness to the insurer on the
21 contract, including interest due and accrued, and increased by any existing additional amounts
22 credited by the insurer to the contract. In no event shall any cash surrender benefit be less than

the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

(10) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(11) For the purpose of determining the benefits calculated under subsections (9) and (10) of this section:

(a) The maturity date shall be the latest date for which election shall be permitted by the contract, ~~[in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract,]~~ but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

1 (b) On and after the maturity date, no surrender charges may be imposed under
2 the annuity contract, except as provided in paragraph (c) of this subsection.

3 (c) For annuity contracts with one or more renewable periods where an interest
4 rate in excess of the minimum rate guaranteed in the contract is assured, a new
5 surrender charge schedule may be imposed for each guaranteed period if:

6 1. The surrender charge is zero (0) at the end of each interest guarantee
7 period and remains zero (0) for at least 30 days;

8 2. The contract language provides for the continuation of the contract
9 without surrender charges, unless the contract owner specifically elects a new
10 guaranteed period with a new surrender charge schedule; and

11 3. The renewal period does not exceed ten (10) years and the maturity date
12 complies with paragraph (a) of this subsection.

13 (d) A contract that provides for flexible considerations may have separate
14 surrender charge schedules associated with each consideration and, for purposes of
15 determining the maturity date, the tenth anniversary of the contract shall be
16 determined separately for each consideration.

17 (12) Any contract which does not provide cash surrender benefits or does not provide death
18 benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any
19 annuity payments shall include a statement in a prominent place in the contract that such benefits
20 are not provided.

21 (13) Any paid-up annuity, cash surrender or death benefits available at any time, other than on
22 the contract anniversary under any contract with fixed scheduled considerations, shall be
23 calculated with allowance for the lapse of time and the payment of any scheduled considerations

beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(14) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (8), (9), (10), (11), and (13) of this section, additional benefits payable:

(a) In the event of total and permanent disability;

(b) As reversionary annuity or deferred reversionary annuity benefits; or

(c) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits;

shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of these additional benefits shall not be required in any paid-up benefits, unless these additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(15) (a) After August 1, 2005, any insurer may file with the executive director a written notice of its election to apply the provisions of this section on a contract-form by contract-form basis to annuity contracts issued by the insurer during the period from the date of the election through June 30, 2006.

- 1 (b) Insurers shall apply the provisions of this section to annuity contracts issued on or
- 2 after July 1, 2006.